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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,452	09/20/2001	Olivier Dovergne	20982-27	6599

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EXAMINER	
PHILOGENE, PEDRO	
ART UNIT	**PAPER NUMBER**
3732	15

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/960,452	DOVERGNE ET AL.	
	Examiner	Art Unit	
	Pedro Philogene	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 February 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-60* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *45 and 54* is/are allowed.

6)☒ Claim(s) *1-15,18-44,46-53 and 55-60* is/are rejected.

7)☒ Claim(s) *16 and 17* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Allowable Subject Matter

The indicated allowability of claims 4,13,14,21-29,31,32 is withdrawn in view of the newly discovered reference(s) to Chu et al., Holland, Kajgana. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3,5-12,15,18,19,35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laporte (6,286,518) in view of Chu et al. (6,145,513).

With respect to claim 1, Laporte discloses a device (1) for applying a substance to the hair, the device comprising a receptacle (2) configured for containing the substance to be applied, and an applicator portion (3) fixed on the receptacle and having at least one delivery orifice (7) enabling the substance to be delivered, wherein the applicator portion has teeth (5,6), the gap between the teeth being such that they allow hairs to pass between the teeth; as set forth in column 3, lines 10-20.

It is noted that Laporte did no teach of teeth arranged around a closed oval curve while enabling the substance to be retained within the curve; as claimed by applicant. However, in a similar art, Chu et al evidences the use of teeth arranged around a closed oval curve while enabling the substance to be retained within the curve to provide an

ergonomic design of the applicator that has been found o be exceptional convenient to use during the dyeing process.

Therefore, given the teaching of Chu et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Laporte, as taught by Chu et al. to provide an ergonomic design of the applicator that has been found o be exceptional convenient to use during the dyeing process.

With respect to claims 2-3,5-12,15,18-20,30-35-42, Laporte discloses all the limitations, as set forth in columns 2-3, lines 1-67; and as best seen in FIGS.1-4; and, as set forth in Chu et al column 5, lines 64-67, column 6, lines 1-3; and as best seen in FIGS.1-27.

Claims 4,31,32,51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laporte (6,286,518) in view of Chu et al. (6,145,513) in view of Holland (4,617,875).

With respect to claims 4,31,32,51, it is noted that the above combination of references did not teach of an applicator being configured for fixing a first position and a second position that is different that the first position, and that in the first position the at least one delivery orifice does not communicate with the substance contained in the receptacle, and in the second position the at least one delivery orifice communicates with the substance contained in the receptacle; as claimed by applicant. However, in a similar art, Holland evidences the use of a receptacle and a applicator with such configurations for ease of application of the treatment material in each case.

Therefore, given the teaching of Holland, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Laporte/Chu, as taught by Holland to provide a device for ease of application of treatment material in each case.

Claims 13,14,20-30,43,44,46-53, 55-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laporte (6,286,518) in view of Chu et al. (6,145,513) in view of Kajgana (6,062,230).

With respect to the above claims, it is noted that the above combination of references teaches all the limitations, except for an adapter, and an applicator having an internal sealing lip for engaging a skirt of the receptacle when the applicator portion is fixed thereon, and the internal lip defining an inside space that is permanently in communication with the outside via the at least one substance delivery orifice; as claimed by applicant. However, in a similar art, Kajgana evidences the use of an applicator having an internal sealing lip for engaging a skirt of the receptacle when the applicator portion is fixed thereon, and the internal lip defining an inside space that is permanently in communication with the outside via the at least one substance delivery orifice and an adapter having such configurations; as claimed by applicant, to provide a device that enables an even, controlled dye application onto the hair of a user.

Therefore, given the teaching of Kajgana, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Laporte/Chu; as taught by Kajgana to provide a device that enables an even, controlled dye application onto the hair of a user.

Claims 33,34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laporte (6,286,518) in view of Chu et al. (6,145,513) in view of Diaz (5,937,864).

With respect to claims 33,34, it is noted that the above combination of references did not teach of an applicator wherein the receptacle includes a removable cap at an end opposite from the applicator portion; as claimed by applicant. However, in a similar art, Diaz evidences the use of a device having a cap at an end opposite from the applicator portion for preventing the removal of the liquid and to stand on the plane surface.

Therefore, given the teaching of Diaz, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a cap in the device of Laporte/Chu, as taught by Diaz, for preventing the removal of the liquid and to be able to stand the device on a plane surface.

Allowable Subject Matter

Claims 16,17 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 45,54 are allowed.

Response to Amendment

Applicant's arguments, see pages 1-19 of the remark, filed 2/17/04, with respect to the rejection(s)of claim(s) 1-3,5-12,15,18-20,30 under 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.

However, upon further consideration, a new ground(s) of rejection is made in view of Chu et al; Kajgana and holland.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene
April 13, 2004

PEDRO PHILOGENE
PRIMARY EXAMINER